



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

**TO:** Office of the Commission Secretary

**FROM:** Office of General Counsel *YCS*

**DATE:** May 26, 1998

**SUBJECT:** MUR 4434 -General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

SENSITIVE

NON-SENSITIVE

☒  
☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

### DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters

☐

MUR

☐

DSP

☐

STATUS SHEETS

☐

Enforcement

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Litigation

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PFESP

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RATING SHEETS

☐

AUDIT MATTERS

☐

LITIGATION

☐

ADVISORY OPINIONS

☐

REGULATIONS

☐

OTHER

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RECEIVED  
FEDERAL ELECTION COMMISSION  
MAY 26 11 17 AM '98

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Outback Steakhouse of Florida, Inc.;  
Sharpe for Congress Committee  
and Mark Brown, as treasurer, *et al.*

MAY 26 11 17 AM '98  
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) MUR 4434  
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**GENERAL COUNSEL'S REPORT**

**SENSITIVE**

**I. BACKGROUND**

On September 9, 1997, the Commission found reason to believe Outback Steakhouse of Florida, Inc. ("Outback") and the Sharpe for Congress Committee and Mark Brown, as treasurer ("the Sharpe Committee"), each violated 2 U.S.C. § 441b(a) through the making and acceptance, respectively, of corporate contributions. The Commission made additional findings at that time against certain corporate officers of Outback for their roles in facilitating the making of corporate contributions, and against the Sharpe Committee for certain reporting violations.

In addition, the Commission approved subpoenas and orders designed to gather information regarding the scope of the corporate effort. To that end, the Commission sought documents and responses to questions from the Sharpe Committee, Outback and Outback officials Robert Basham, Chris Sullivan and Joseph Kadow, and from Outback franchisees who had indicated that they had contributed to the Sharpe Committee at the behest of Outback officials. In addition, this Office conducted informal interviews with Terry Spirio, a Sharpe campaign volunteer, and certain individuals whose mailing addresses were given as the Outback headquarters address, but who were not identified as working for Outback; these interviews addressed the circumstances of their contributions. Attempts to locate Rick Fontaine, the Sharpe Committee's treasurer at the time of the activities in question, have so far proven unproductive.

One potential witness, Missy Shorey, a paid campaign worker in charge of fundraising for the Sharpe Committee, has been uncooperative.

Due to apparent redactions in some of the produced documents, this Office was required to send a follow-up letter to counsel for the Outback respondents seeking unredacted copies of those documents. As discussed below, the response to this Office's inquiry was unsatisfactory.

This Office's review of the responses suggests that additional discovery, discussed below, is necessary. Such discovery would take the form of Subpoenas to Submit Written Answers and Orders to Produce Documents and Subpoenas for Depositions to be sent to certain individuals.

## **II. ANALYSIS**

Responses to the Commission's discovery requests by Outback franchisees and persons not employed by Outback suggest a strong Outback effort on Mark Sharpe's behalf. According to Outback franchisee B.J. Stone, Robert Basham called to ask him to contribute to the Sharpe Committee, and Stone contributed as a result of that phone call. Basham later called Stone a second time to inquire if Stone knew anyone else who might be interested in contributing. Following that call, Stone's then-girlfriend made a contribution to Sharpe. Kevin Harron, another Outback franchisee, states that he had a conversation with Charles Angelopoulos, his business partner, regarding Sharpe, and that Harron decided to contribute to Sharpe after that conversation. Significantly, Robert Basham states that he solicited a contribution from Mr. Angelopoulos, which suggests that Angelopoulos passed on the request from Basham to Harron. These occurrences confirm Outback's strong interest in the Sharpe-Gibbons race.

Even more indicative of Outback's intentions are drafts of certain letters apparently sent out soliciting and accepting contributions.<sup>1</sup> One form letter, prepared for Joseph Kadow's signature as "Vice President and General Counsel," describes the race between Gibbons and Sharpe. In the first paragraph of the second page, Kadow notes that "Outback Steakhouse is committed to the Sharpe campaign and has provided him with the maximum allowable contribution from our PAC. I urge you to support the Sharpe campaign to the full extent that your resources allow." Kadow further states that "[c]hecks should be made payable to Sharpe for Congress. Please send your checks to Rick Berman or me so that Mr. Sharpe will understand the extent of support from the restaurant industry." It appears that this letter may have been sent to executives for Cracker Barrel Old Country Store, Inc.; S&A Restaurant Corp.; Sizzler International, Inc.; TGI Friday's; and General Mills Restaurants, Inc.

Another Kadow letter was apparently written in response to a solicitation from a corporate executive of Danka Industries, Inc., for contributions to Sandy Mortham's race for Florida Secretary of State. Kadow's letter, again prepared for his signature as "Vice President and General Counsel," encloses Chris Sullivan's personal check for \$500 and Outback PAC's check for \$500. Kadow states that "[w]e hope to send additional checks from Outback officers and employees shortly." Kadow then turns his attention to the Sharpe-Gibbons race and states that "[a]ll of us at Outback Steakhouse believe Mr. Sharpe would be an excellent Congressman and would do a far better job of representing the constituency in the 11th District than Mr. Gibbons has . . . . We are firmly committed to the Sharpe campaign and are hosting a

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<sup>1</sup> The letters appear collectively as Attachment 1 to this report. Although the letters bear dates in 1996 and 1997, the response acknowledges that these are reprinting dates, and that they do not signify the dates on which the letters were written. Indeed, the letters must refer to the 1994 race, as Gibbons was not a candidate in 1996.

fundraiser at Bob Basham's home on September 17th. Newt Gingrich will be the guest of honor. I hope you can attend."

Additionally there are two letters from Kadow to an attorney described as "a significant investor in the restaurant industry." In the first letter, Kadow begins by recounting how he had previously informed the attorney about how the incumbent, Sam Gibbons, was supporting policies detrimental to the restaurant industry. The letter then touts Mr. Sharpe's chances against Mr. Gibbons, and points out the benefits should Sharpe defeat Gibbons. Next, the letter solicits contributions to the Sharpe campaign from the attorney "and all of [his] associates in the restaurant industry." The letter states that "I hope you will make the maximum contribution of \$1,000. Checks should be made payable to Mark Sharpe for Congress. If you are inclined to contribute, please send your check to me. I have been collecting checks and giving them to Mark to ensure that he understands the extent of support he is receiving from the restaurant industry."

The next letter to this attorney thanks him for his previous contribution, apparently made in response to the first letter. This second letter again criticizes Gibbons' support for certain positions and touts Sharpe's chances. The letter then seeks additional contributions: "Our need for money to buy additional television time is immediate. Please send two checks made payable to Sharpe for Congress, each in the amount of \$1,000, one signed by you and one signed by Elaine. The checks should be sent to me at 550 North Reo Street, Suite 204, Tampa, Florida 33609."

A letter to a different contributor appears to indicate Bob Basham's involvement and interest in the Sharpe campaign. The letter, from the same Outback secretary who typed the Kadow letters, thanks the contributor, "on behalf of Bob Basham," for a contribution to the

Sharpe campaign. The letter then notes that the check was made payable to Outback Steakhouse and asks the contributor to "reissue a check made payable to Sharpe for Congress. You may send the check to us, and we will forward it to campaign headquarters. . . . Again, thank you on behalf of Outback Steakhouse and especially on behalf of Sharpe for Congress."

The response suggests that these letters may never have been actually sent; the copies produced are blank at the signature line. Nevertheless, they do shed light on what appears to have been the relationship between Outback and the Sharpe campaign, and the attempt by Outback to pressure candidate Sharpe into adopting certain positions through evidence of Outback's fundraising acumen.

One document which may contain additional evidence of a Sharpe-Outback relationship appears to have been redacted to eliminate any such reference. The document is entitled "Sharpe for Congress Campaign Plan 1994," and it was attached as Exhibit O to Outback's response to the Commission's initial Subpoena and Order. Attachment 2. The document appears to be missing information in certain areas. For example, in the section entitled "VI. Fundraising," certain information appears to have been redacted. This section contains a number of sub-headings, including "A. PACs", "B. Direct Mail", "D. Candidate", etc. There is a blank area of approximately half of a page after what appears to be the end of sub-heading "B. Direct Mail." The next page begins with sub-sub-headings "3. Mail early personal and business type list," "4. Connie Mack list" and "5. one on one series." The next item is sub-heading "D. Candidate." Thus, it appears that the beginning of what should be sub-heading "C" and its first two sub-sub-headings have been redacted. In addition, in Section "VIII. Operations;" the first sub-heading is entitled "A. Headquarters" followed by four sub-sub-headings, all of which take up a little less

than half of a page. The rest of the page is blank. The following page starts off with four lines comprising what appears to be the remnants of sub-heading B, and then picks up with sub-heading "C. Compliance." Thus, it appears that the majority of sub-heading B has been redacted. Also, under section "XI. Timeline," there is no information at all. It is not clear if this section was always blank, or if it has been completely redacted.

It is conceivable that the information which appears to have been redacted addressed responsibilities to be borne by Outback in relation to the Sharpe campaign, and thus established a more direct link between the efforts by Outback on behalf of the Sharpe campaign. When these apparent redactions were discovered by this Office, counsel for Respondents was contacted, and an unredacted copy of the document was requested. The response to our inquiries was the assertion that "Mr. Kadow searched for and ultimately obtained the document submitted as Exhibit O by contacting John [sic] Coley, a principal advisor to Mr. Sharpe during the 1994 Campaign. Since receiving your letter, Mr. Coley has assured Mr. Kadow that the document provided to [the Commission] as Exhibit O is a complete document. When he was asked by Mr. Kadow to provide the document he simply copied the only hard copy in his possession without alterations or redactions."

Although the response states that Mr. Coley copied "the only hard copy of the document in his possession without alterations or redactions", this still leaves open the possibility that a more complete version exists. For example, it does not eliminate the possibility other persons may be in possession of a more complete version of the document. Also, the response does not rule out the possibility that Coley himself is in possession of a more complete document on a computer hard drive or diskette.

The third-hand accounts of Mr. Coley's statements regarding what he may have told Mr. Kadow cannot be relied upon as demonstrating Mr. Coley's full knowledge regarding the document in question. In addition, it is possible that Coley will have other information regarding any relationship between Outback and the Sharpe campaign.. The only way to be sure is to submit a subpoena for all relevant documents directly to Mr. Coley, and to question him under oath.

As noted above, Missy Shorey, a potential witness, has not been cooperative. Originally contacted only in our effort to locate Rick Fontaine, it now appears that Ms. Shorey may have even more information to offer. In his response to the Commission's question regarding meetings between himself and Sharpe campaign officials, Joseph Kadow states that

Missy Shorey, a Sharpe Campaign worker, also came by my office five or six times to drop off invitations and to pick up contribution checks that had been sent to my office instead of directly to the Sharpe Campaign office. Ms. Shorey also participated heavily with the Gingrich fund-raiser and came by my office in conjunction with that event. We rarely had discussions beyond exchanging greetings and discussing upcoming campaign events. She may have chatted with other Outback officers in the process of coming and going from my office.

Ms. Shorey's reaction to contact from this Office also suggests that she may have relevant information. According to the Report of Investigation submitted by an investigator in this Office, Ms. Shorey "was extremely defensive saying that 'the campaign did nothing illegal.'" Ms. Shorey was then informed by the investigator that she should not conclude that any violations of the Act had occurred, that the Commission was merely looking into the circumstances of the campaign, and that she was a source of information. Ms. Shorey then informed the investigator that she wished to speak to her attorney, although she would not identify her attorney to the investigator. The investigator requested that Ms. Shorey contact him



as soon as she had a chance to speak with her attorney. Five days later, Ms. Shorey contacted the investigator and informed him that, "under advice of counsel," she would respond to "questions in writing" only. Ms. Shorey was unwilling to meet with the investigator for an interview.

The fact that Ms. Shorey's name appears prominently in Mr. Kadow's response suggests that she is someone with information relevant to the Commission's investigation in this matter. Given her reluctance to speak informally with this Office it is clear that formal discovery is necessary to compel her to produce whatever relevant information may be in her possession.

### **III. ADDITIONAL DISCOVERY**

Attached are several subpoenas and orders to be sent to various corporations and individuals. Attachment 3. The Subpoenas and Orders to corporations whose executives appear as addressees on letters issued by Kadow or other Outback personnel, and to certain other persons, seek copies of any fundraising documents, as well as any other information regarding the involvement of Outback personnel in seeking political contributions. The Subpoenas and Orders to John Coley and Missy Shorey seek all documents in their possession regarding the 1994 Sharpe campaign. They also request a current address and phone number for Rick Fontaine. The Subpoena and Order to the Sharpe campaign seeks all documents which mention Outback, Joseph Kadow, Chris Sullivan and/or Robert Basham. It also requests a current address and phone number for Rick Fontaine.

This Office also believes that it may be useful to conduct depositions. Final determinations will be made after all documentary evidence is obtained, but, in order to expedite this procedure, this Office recommends that the Commission approve subpoenas for depositions


for Joseph Kadow, Robert Basham, Chris Sullivan, Rick Fontaine, Joe Coley, Missy Shorey and Mark Sharpe.

**IV. RECOMMENDATIONS**

1. Approve the attached Subpoenas to Produce Documents and Orders to Submit Written Answers to be sent to Cracker Barrel Old Country Store, Inc.; S&A Restaurant Corp.; Sizzler International, Inc.; TGI Friday's; General Mills Restaurants, Inc.; Danka Industries, Inc.; Coca-Cola Fountain; John W. Meshad; Missy Shorey; Jon P. Coley; and Mark Sharpe for Congress.
2. Approve the appropriate Subpoenas for Depositions to be sent to Joseph Kadow, Robert Basham, Chris Sullivan, Rick Fontaine, Jon P. Coley, Missy Shorey and Mark Sharpe.
3. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

5/22/98  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

**Attachments:**

1. Outback letters
2. Sharpe for Congress Campaign Plan
3. Subpoenas to Produce Documents and Orders to Submit Written Answers

Staff Assigned: Tony Buckley